

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>SUZANNE FABIAN</b>	)	
Claimant	)	
VS.	)	
	)	
<b>SEDGWICK COUNTY</b>	)	Docket No. 214,375
Respondent,	)	
Self-Insured	)	

**ORDER**

Respondent appealed the September 22, 2000 Award entered by Administrative Law Judge Jon L. Frobish. The Board heard oral argument in Wichita, Kansas, on February 9, 2001.

**APPEARANCES**

Dale V. Slape of Wichita, Kansas, appeared for claimant. E. L. Lee Kinch of Wichita, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are listed in the Award.

**ISSUES**

This is a claim for a June 18, 1996 accident that injured the right knee and for reflex sympathetic dystrophy (RSD) that allegedly developed following that accident. In the September 22, 2000 Award, Judge Frobish determined that claimant had developed RSD in both legs and her low back as a direct result of the right knee injury and, therefore, claimant was entitled to receive permanent total disability benefits.

Respondent contends Judge Frobish erred. It argues that (1) claimant does not have RSD, (2) if claimant does have RSD, it was not caused by the June 1996 accident, and (3) if claimant has RSD that was caused by the June 1996 accident, the RSD is located in the right lower extremity only. Respondent argues that claimant's benefits should be based upon a scheduled injury to the right leg.

Conversely, claimant contends that the Award should be affirmed. Claimant argues that she has proven that she now has RSD in both legs and in the low back that is directly caused by the June 1996 accident and that she has been rendered unable to engage in any substantial and gainful employment.

The issues before the Board on this review are:

1. Did claimant develop reflex sympathetic dystrophy (RSD)?
2. If so, is the RSD related to the June 1996 accident?
3. If so, is claimant's permanent impairment or permanent injury limited to the right lower extremity only?
4. What is the nature and extent of claimant's injury and disability?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Board finds and concludes:

1. In June 1996, claimant was working for respondent as a sergeant in the Sedgwick County jail. On June 18, 1996, claimant injured her right knee in a scuffle with a prisoner. The parties stipulated that claimant's accident arose out of and in the course of employment with respondent.
2. Claimant eventually came under treatment of orthopedic surgeon Bradley Bruner, M.D. In August 1996, Dr. Bruner surgically repaired the right anterior cruciate ligament. Because the medial collateral ligament did not heal as expected, in December 1996 the doctor performed a second knee operation and repaired it.
3. Persuaded by Dr. Bruner's testimony, the Board finds that claimant, following the first surgery, developed reflex sympathetic dystrophy (RSD). In an attempt to control the pain and reduce the need for medications, in June 1998 claimant had a spinal stimulator implanted in her low back. Based upon Dr. Bruner's testimony, the Board finds that claimant has a 31 percent whole body functional impairment and that she is essentially unemployable. The finding that claimant has RSD is supported by the testimonies of Philip R. Mills, M.D., who examined claimant at the Judge's request; Frederick R. Smith, D.O., who examined claimant at respondent's request; and Pedro Murati, M.D., who examined claimant at her attorney's request.
4. The only doctor who did not testify that claimant had RSD was Robert A. Rawcliffe, Jr., M.D. Dr. Rawcliffe examined claimant at respondent's request and testified that claimant had some characteristics of RSD and, therefore, he could only make a provisional diagnosis of that condition. Nonetheless, Dr. Rawcliffe did testify that assuming claimant

does have RSD, it is related to the June 1996 injury and logically linked to the subsequent surgeries. The overwhelming weight of the evidence establishes that claimant developed RSD that was caused by the June 1996 injury and resulting surgeries.

5. Persuaded by the testimony of Dr. Bruner, the Board finds that the RSD has migrated and is now causing symptoms in the low back and both legs and that claimant now has a 31 percent whole body functional impairment. According to Dr. Bruner, claimant has a 10 percent whole body functional impairment due to the back and a 23 or 24 percent whole body functional impairment due to the right lower extremity, which convert to 31 and 32 percent for the whole body. On the other hand, Dr. Mills calculated claimant's functional impairment at 15 percent to the whole body combining a 25 percent impairment for the right lower extremity with a 5 percent whole body functional impairment for the back.

Dr. Murati agreed with Dr. Bruner that claimant has a 24 percent whole body functional impairment due to the right lower extremity. But Dr. Murati combined that functional impairment with a 5 percent whole body functional impairment for the back, which he diagnosed as being strained, and a 1 percent whole body functional impairment for loss of range of motion of the lumbar spine, and calculated claimant's whole body functional impairment at 29 percent. Only Dr. Smith testified that claimant's functional impairment was limited to the right lower extremity, which he rated at 35 percent. But even Dr. Smith acknowledges that claimant now has RSD symptoms in the left leg and buttocks.

The greater weight of the evidence indicates that claimant has permanent injury and permanent impairment to both her low back and right leg, which constitute a 31 percent whole body functional impairment.

6. Vocational rehabilitation experts Jerry D. Hardin and Karen Crist Terrill testified on behalf of claimant. Both Mr. Hardin and Ms. Terrill stated that claimant is realistically unemployable.

7. The Board affirms the Judge's finding and conclusion that claimant is essentially unemployable. That conclusion is based upon the preponderance of the medical evidence. Dr. Bruner testified that claimant's ability to even sit was quite limited and that she would be required to lie down after an hour or two. The doctor also believes that claimant will need medication for chronic pain for the rest of her life. According to Dr. Bruner, claimant is essentially unemployable. Dr. Mills testified that he did not disagree with Dr. Bruner's opinion. Dr. Murati also testified that claimant was essentially unemployable. And Dr. Smith indicated that claimant would be able to sit for an hour but then would have to lie down 10 to 15 minutes every two hours.

When considering and weighing all of the medical opinions, the Board concludes that claimant is unable to engage in any substantial and gainful employment as a result of the June 1996 accident.

8. The overwhelming weight of the evidence establishes that the September 22, 2000 Award should be affirmed. The Board adopts the findings and conclusions of the Judge to the extent they are not inconsistent with the above.

**AWARD**

**WHEREFORE**, the Board affirms the September 22, 2000 Award.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dale V. Slape, Wichita, KS  
E. L. Lee Kinch, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director